

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CN4011
)	EEOC NO.: 440-2008-05471
PATRICK M. LEE)	ALS NO.: 10-0003
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Rozanne Ronen presiding, upon Patrick Lee's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")^[1] of Charge No. 2008CN4011; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following:

1. The Petitioner filed a charge of discrimination with the Respondent on May 14, 2008. The Petitioner alleged that from July 27, 2007, and continuing through April 29, 2008, the Illinois State Board of Education("Employer"), subjected him to unequal terms and conditions of employment because of his race, Black, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On December 2, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On January 4, 2010, the Petitioner filed a timely Request. On February 25, 2010, the Petitioner filed his Reply to the Respondent's Response.
2. The Petitioner began working for the Employer on June 16, 1989, as a Field Auditor. Since 1995, the Petitioner has held the position of Principal Consultant ("PC").

^[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

3. The Petitioner identified five (5) incidents which he alleged in his charge were instances of unequal terms and conditions of employment due to his race: **(a)** First, on July 27, 2007, the Employer advised the Petitioner that a non-Black PC would be the lead on Supplemental Education Services Board meetings and that the non-Black PC would be traveling to Springfield without the Petitioner; **(b)** Second, on July 27, 2007, the Employer advised the Petitioner that when he was in Springfield, the Petitioner would not be permitted to be present on the third floor of the Employer's building; **(c)** Third, on November 16, 2007, the Petitioner was advised that he would be excluded from a meeting with visiting officials from the United Kingdom; **(d)** Fourth, on February 5, 2008, the Employer revoked its prior approval of the Petitioner's request for an adjusted work schedule for that particular day, and **(e)** Fifth, on April 29, 2008, the Employer issued the Petitioner a written reprimand for having utilized the State's e-mail system to electioneer for a union position.
4. The Employer denied any racial motivation as to any of the incidents described above. The Employer stated that there was no policy concerning which employees were to be present at any given meeting. However, as for the November 16, 2007, meeting with the foreign dignitaries, the Employer stated that when meeting with foreign dignitaries, generally senior executive personnel are designated by the Employer as contact persons. Further, the Employer stated that the Petitioner, the Petitioner's supervisor, who is non-Black, and 400 other employees, the majority of whom are non-Black, were also excluded from the November 16th meeting.
5. Regarding the February 5, 2008, incident the Employer stated the Petitioner had been allowed a 10 minute adjustment to his work schedule, and this adjustment was revoked, which resulted in nothing more than a minor inconvenience to the Petitioner. Finally, the Employer stated the Petitioner was issued a written reprimand on April 29, 2008, because the Petitioner violated Article 29, Section 1 of the Code of Conduct from the Collective Bargaining Agreement between the Petitioner's Union and the Employer when the Petitioner sent a mass e-mail for the purposes of union electioneering. The e-mail also contained disparaging remarks about management.

6. The Petitioner submitted for the Commission's review a plethora of documents, including copies of work e-mails, material on bullying, Jim Crow Laws, the Employer's Affirmative Action plan, and his discipline record.
7. In its Response, the Respondent argues that it lacks jurisdiction to investigate the two incidents the Petitioner alleged occurred on July 27, 2007, because the Petitioner filed his charge on May 14, 2008, and therefore not within 180 days of the alleged civil rights violations, as required by Section 7A-102(A) of the Act. As to the three incidents alleged to have occurred on November 16, 2007, February 5, 2008, and April 29, 2008, respectively, the Respondent argues that its dismissal of the charge was appropriate for lack of substantial evidence because there was no evidence that similarly situated non-Black employees were treated more favorably by the Employer under similar circumstances.
8. In his Reply, the Petitioner argues that he has clearly established a *prima facie* case of discrimination, and that the documents he submitted in support of his Request clearly indicated that a similarly situated non-Black PC was treated more favorably than the Petitioner.

Conclusion

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

In the first instance, if each incident alleged in the Petitioner's charge is taken as separate, discrete acts of discrimination, the Respondent would be correct in its determination that the charge is untimely as to the two alleged incidents of July 27, 2007. The Petitioner was required to file his charge within 180 days after the alleged civil rights violations had occurred. See 775 ILCS § 5/7A-102(A). The Petitioner filed the instant charge on May 14, 2008, which was more than 180 days after these alleged civil rights violations had occurred.

Second, assuming *arguendo* the Petitioner's charge is timely as to all incidents alleged because he alleged a "continuing violation," the charge was properly dismissed for lack of substantial evidence. There has been no evidence submitted from which the Commission or any reasonable person could conclude that any of the alleged incidents were motivated by racial animus. The documents submitted by the Petitioner contain no direct evidence of race discrimination, nor do the documents provide indirect evidence that the Employer was motivated by the Petitioner's race, or any evidence of pretext.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Illinois State Board of Education, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

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HUMAN RIGHTS COMMISSION

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Entered this 25th day of August 2010

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen